



**IT IS ORDERED as set forth below:**

**Date: October 15, 2018**

**Barbara Ellis-Monro  
U.S. Bankruptcy Court Judge**

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE:

JAMES D. CUNNINGHAM,

Debtor.

CASE NO. 18-59411-BEM

CHAPTER 13

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JAMES D. CUNNINGHAM,

Plaintiff,

v.

ADVERSARY PROCEEDING NO.  
18-05223-BEM

NAJARIAN CAPITAL, LLC,

Defendant.

**ORDER OF REMAND**

This adversary proceeding is before the Court on the Notice of Removal Pursuant to 28 U.S.C. § 1452 (the “Notice”) filed on September 17, 2018 [Doc. No. 1]. Through the Notice, Plaintiff seeks to remove a dispossessory proceeding (“Dispossessory Proceeding”) filed on August 27, 2018, to this Court.

On August 22, 2018, this Court entered an order (“Validation Order”) in Debtor’s chapter 13 case granting Freedom Mortgage Company’s *Amended Motion to Validate Foreclosure Sale* (the “Motion to Validate”). In the Validation Order, the Court determined that the real property located at 4313 Executive Drive, Stone Mountain, GA 30083 (the “Property”) is not property of the bankruptcy estate and that Plaintiff held a mere possessory interest in the Property. [Case No. 18-59411-bem; Doc. No. 38]. By the Motion to Validate movant sought clarification that the automatic stay did not apply to the foreclosure sale on the Property conducted June 5, 2018. The Court so concluded.

Plaintiff filed a Motion to Amend Judgment with respect to the Validation Order which was denied by order entered October 12, 2018. [Case No. 18-59411-bem; Doc. 50]. The Property is not property of the bankruptcy estate and Debtor’s chapter 13 case was voluntarily dismissed on August 27, 2018 [Case No. 18-59411-bem; Doc. 40]. Thus, even assuming this Court has jurisdiction<sup>1</sup> to consider a dispossessory action, there is no bankruptcy purpose that can be served through this proceeding. Accordingly, the Court finds that it is appropriate to remand this proceeding to the Magistrate Court Of DeKalb County, Georgia and it is now hereby

ORDERED that, this proceeding is remanded to the Magistrate Court of DeKalb County, Georgia. It is further

ORDERED that, the Clerk is directed to close this proceeding.

**END OF ORDER**

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<sup>1</sup> The Court makes no determination as to jurisdiction in this proceeding.

**Distribution List**

James Daniel Cunningham  
4313 Executive Dr  
Stone Mountain, GA 30083

Mary Ida Townson  
Chapter 13 Trustee  
Suite 2200  
191 Peachtree Street, NE  
Atlanta, GA 30303-1740

Joshua G. Crowe  
48 Northlake Drive  
Hartwell, GA 30643

John Turner  
5023 Cagle Mill R.  
Lula, GA 30554-2727

Oksana Sepich  
Najarian Capital, LLC  
6065 Roswell Rd., Ste 880  
Atlanta, GA 30328